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(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.170/02 **सन्** **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Dhirendra Mishra.

CRIMINAL APPEAL No. 170/ 20002

APPELLANT : Lakhanlal
S/o Madho Satnami,
Aged about 35 years,
R/o Dhorari,
Police Station Patan
District Durg, CG.

Versus

RESPONDENT : State of Chhattisgarh.

Shri D.R. Sharma learned Sr. counsel with Shri Shashi Bhushan Advocate, for the accused/appellant.

Shri Ashish Shukla, Additional Public Prosecutor for respondent/ State.

(ORAL) JUDGMENT
{Dated 20-3-2007}

L.C. Bhadoo.J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 29.12.2001 passed by Additional Sessions Judge, Durg, in Sessions trial No. 99/2000 whereby he has been held guilty under section 302 of the Indian Penal Code for committing the murder of his wife namely Devkibai and sentenced to undergo imprisonment for life and pay

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fine of Rs. 1000/-, in default of payment of fine to further undergo RI for one month.

Case of the prosecution, in brief, is that, on 4.2.2000 Devkigbai herself appeared in Police Chowki Ranitarai and gave statement Ex. P-21 to the effect that she was married to the accused about 11 years back, she was the second wife of the accused and out of their wedlock, two sons were born to her. Her husband was doubting her fidelity, therefore, he used to quarrel with her and beat her. On the date of incident also, due to suspicion of illicit relations, he picked up quarrel with her and at about 11 a.m. with an intention to cause her death, poured kercsene on her body from the container and set her on fire with the match box as a result of which her hands, chest, waist, back, and thighs were burnt. Based on this statement of Devkibai, FIR Ex. P-14 was registered for the commission of the offence under Section 307 of the IPC. Devkibai was sent for medical treatment to District Hospital, Durg, where Dr. B. Balkishore PW-9 examined her. While Devkibai was under treatment, her dying declaration Ex. P-8 was recorded by Executive Magistrate PW-8 S.R. Mandavi. Thereafter, she was taken to Christian Hospital, Dhamtari, where she succumbed to the burn injuries on 8.2.2000. Merg intimation Ex. P-18 was sent by the hospital. Based on that, offence under section 307 was converted into section 302 of the IPC. The Investigating Officer Heera Singh Baghel PW-15 conducted inquest on the dead body of Devkibai and prepared inquest report. Clothes of Devkibai were taken into possession under Ex. P-2 and plain soil

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as also the soil containing kerosene oil was taken into possession under Ex. P-3. Shirt of the accused was seized under Ex. P-4. Burn injuries were examined by Dr. B. Balkishore PW-9 who prepared the injury report Ex. P-10. Post mortem examination on the body of Devkibai was conducted by Dr. A. Quadir PW-13 along with Dr. Smt. M. Purohit who opined in the report that the cause of death was septicemia and shock on account of the burn injuries.

After completion of the investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to the Court of Sessions Judge, Durg from where learned Additional Sessions Judge, Durg, received the same on transfer for trial.

Prosecution in order to establish the charge against the accused/appellant has examined as many as 15 witnesses. Statement of the accused was recorded under section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution case and stated that on the fateful day he was working in the agricultural field along with his mother, only after he was informed by one Sukalu and 2-3 other persons that his wife had sustained burn injuries, he rushed to his house along with his mother and saw Devkibai in burnt condition. On inquiry by the mother of the accused, Devkibai disclosed that she had burnt herself. Thereafter, her parents were also informed about the incident and they reached the hospital at Durg and took Devkibai to Christian Hospital, Dhamtari on 5.2.2000. He has further stated that Devkibai had become unconscious and at the

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instance of his in-laws, he has been falsely implicated. He examined two witnesses namely Yashwant Kumar DW-1 and Ratilal DW-2 in his defence.

Learned Additional Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused as mentioned above.

We have heard counsel for the parties and perused the material available on record.

Learned counsel for the accused/appellant argued that when Devkibai sustained burn injuries, accused was in the agricultural field along with his mother. When he was informed about the incident, he came to his house and this fact has been admitted by PW-2 Sukalu. He further argued that Devki Bai was not in a fit state of mind to give the statement, therefore, dying declaration cannot be relied upon.

On the other hand, learned counsel appearing for the respondent/State supported the impugned judgment of the trial Court.

In this case, primarily the conviction is based on the dying declaration made by the deceased in which she stated that the accused after pouring kerosene on her body set her on fire. In order to place reliance on the dying declaration, the dying declaration should of such a nature as to inspire full confidence of the Court in its correctness. The court has to be on guard that the statement of

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the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant.

As far as the argument of learned Sr. advocate appearing for the accused/appellant that Devkibai was not in a fit state to give statement, is concerned, PW-8 Shri S.R. Mandavi, Executive Magistrate, who recorded the dying declaration Ex. P-8 of the deceased has categorically stated that on 4.2.2000 on the orders of SDM he went to the District Hospital, Durg where he recorded the dying declaration of Devkibai in between 5.10 p.m. to 5.40 p.m. and before recording the statement, he obtained medical certificate of Dr. B. Balkishore PW-9 in which he has stated that on 4.4.2000 he was working in District Hospital, Durg and on that day he was on duty from 1 p.m. to 8.30 p.m. and during this period he received the requisition Ex. P-9 for examination of Devkibai and thereafter he examined her, she was in a precarious condition, her blood pressure was not recordable and she was asking for water time and again, there were burn injuries on her face, neck, chest, half portion of back, half portion of stomach, both hips, thighs extending to knees and both hands. This apart, hair of the head were also burnt. Smell of kerosene was emanating from the body of Devkibai and the burn injuries were up to 80 per cent. After examination, he gave report Ex. P-10. At about 5 p.m. in the evening on being asked by the Naib Tehsildar, he examined Devkibai and gave certificate of Ex. P-8 to the effect that she was in a fit state of mind to give the

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statement. In the cross examination of Dr. B. Balkishore PW-9 and the Executive Magistrate, S.R. Mandavi PW-8 the defence has not been able to bring on record any circumstance to show that Devkibai was not in a fit state of mind to give statement, therefore, in view of the evidence of the Executive Magistrate PW-8 and Dr. B. Balkishore PW-9, it is established that Devkibai was in a fit state of mind to give statement.

Now as far as the second argument that accused was not at his residence and in fact, he was in the agricultural field along with her mother, is concerned, in the dying declaration recorded by the Executive Magistrate PW-8, Devkibai has categorically stated that the incident took place at about 10-11 a.m., her husband was quarreling with her for last 2-3 days, and on that day again there was quarrel, her husband was in the habit of distilling liquor at his residence, when anybody came to consume liquor, he used to doubt her fidelity and quarrel with her. On the fateful day, her husband poured kerosene on her body and set her on fire with the match box, she sustained burn injuries on hands, chest, neck and back. As far as the factum of pouring kerosene on her body is concerned, Dr. B. Balkishore PW-9 who examined Devkibai has also stated that smell of kerosene was emanating from her body. Heera Singh Baghel PW-15, has stated in his evidence that on 4.2.2000 he was posted at Police Chowki Ranitarai as Assistant Sub Inspector, on that day Devkibai came there and lodged the report Ex. P-14, at that time Devkibai was in a burnt condition, she informed him that her husband was doubting her fidelity and

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therefore, he used to quarrel with her and on that day ,at about 11 a.m. he poured kerosene on her body from the container and set her on fire. Therefore, in the first instance Devkibai immediately gave the statement Ex. P-21 in the police out post, thereafter, she was taken to Government Hospital, Durg where dying declaration Ex. P-8 was recorded by S.R. Mandavi Executive Magistrate PW-8 in which she has categorically stated that the accused set her on fire after pouring kerosene on her body as he used to suspect her fidelity.

So far as the defence of the accused that at the time of incident he was not at his residence rather he was in the agricultural field along with her mother. Only when he was informed about the incident he rushed to the house, is concerned, PW-2 Sukalu who has turned hostile and has not supported the case of the prosecution, has stated that accused was in the agricultural field at the time of incident. In paragraph No.3 of his cross examination by AGP he has stated that Devkibai was crying with full force and disclosed that she was set on fire, but she did not disclose the name of the person who set her on fire. Defence witnesses No.1, Yashwant Kumar examined by the accused in the examination in chief has stated that Sukalu brought the accused and her mother from the agricultural field, but in the cross examination he has stated that he did not see the deceased while burning nor did he see the person who set her on fire. He came to know about the incident after Devkibai sustained burn injuries. DW-2 Ratilal, who is the brother of the accused has stated in his

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examination in chief that at the time of incident the accused and her mother were working in the agricultural filed, but in the cross examination this witness has stated that it is correct to say that the accused used to doubt the fidelity of his wife and on account of this husband and wife used to quarrel, therefore, the evidence of Ratilal, the brother of the accused supports the version of deceased that the accused used to doubt her fidelity and quarrel on account of that.

Now the question remains that the defence has not been able to bring any circumstance on record that the deceased had any motive to implicate her husband in a false case. The accused has also stated in his statement that on inquiry by his mother the deceased informed her that she sat herself on fire and thereafter she became unconscious. However, PW-8 the Executive Magistrate S.R. Mandavi and Dr. B. Balkishore PW-9 have categorically stated that she was conscious and she gave the statement in between 5.10. p.m. and 5.40 p.m. Even DW-2 Ratilal has stated in paragraph No 2 of his evidence that Devkibai was crying on account of burn injuries. Thus the defence of the accused that Devkibai became unconscious and only on the advice of the police and her parents she has involved him in a false case, does not appear to be correct. There is no reason before this Court to disbelieve the dying declaration of Devkibai. Deceased was the mother of two sons born out of the wedlock of accused and herself and therefore, there was no occasion for her to implicate her husband in a false case. Therefore, in view of the dying declaration

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of Devkibai which inspires full confidence of the Court, the defence evidence is not worth reliance to the effect that accused was at the agricultural field at the time of incident.

For the foregoing reasons, we are of the considered opinion that the dying declaration of Devkibai is true and the same is corroborated by the circumstantial evidence on the ground situation. Therefore, we do not find any illegality or infirmity in the impugned judgment convicting and sentencing the accused as mentioned above. Accordingly, the appeal being devoid of substance is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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